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Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights

Preliminary report submitted by Mrs. Fatma Zohra Ksentini, Special Rapporteur, pursuant to Commission resolution 1995/81

CONTENTS

		Paragraphs	Page
Introduction		1 - 5	3
I.	MANDATE AND WORKING METHODS OF THE SPECIAL RAPPORTEUR	6 - 21	4
II.	LEGAL FRAMEWORK AND INTERNATIONAL STANDARDS	22 - 72	7
	A. Background	22 - 30	7
	B. Basel Convention	31 - 41	8
	C. Bamako Convention	42 - 48	11
	D. Code of Practice on the International Transboundary Movement of Radioactive Waste	49 - 52	13
	E. Other international instruments	53 - 60	15
	F. Other relevant norms, principles and guidelines	61 - 70	16

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CONTENTS (continued)

		Paragraphs	Page
	G. Human rights norms and standards	71	20
	H. Domestic law	72	20
III.	ASPECTS OF THE ILLICIT TRAFFIC IN, TRANSFER AND DUMPING OF TOXIC AND DANGEROUS PRODUCTS AND WASTES	73 - 102	20
	A. Outright dumping of hazardous wastes for disposal or storage	75 - 76	20
	B. Trade in hazardous wastes for recycling or further use	77 - 91	21
	C. Export of waste-intensive industries	92 - 97	23
	D. Movement of toxic and dangerous products	98 - 102	24
IV.	FACTORS CONTRIBUTING TO THE ILLICIT TRAFFIC IN, TRANSFER AND DUMPING OF TOXIC AND DANGEROUS PRODUCTS AND WASTES IN AFRICAN AND OTHER DEVELOPING COUNTRIES	103 - 115	25
V.	RELATIONSHIP BETWEEN THE ILLICIT DUMPING OF TOXIC AND DANGEROUS PRODUCTS AND WASTES IN AFRICAN AND OTHER DEVELOPING COUNTRIES AND THE ENJOYMENT OF HUMAN RIGHTS	116 - 140	28
	A. General considerations	116 - 124	28
	B. Human rights and interrelated issues	125 - 140	30
VI.	PRELIMINARY CONCLUSIONS AND RECOMMENDATIONS	141 - 154	35
	A. Conclusions	141 - 150	35
	B. Recommendations	151 - 154	37

Introduction

1. At its fifty-first session, the Commission on Human Rights, aware of the growing practice of the dumping in Africa and other developing countries by transnational corporations and other enterprises from industrialized countries of hazardous and other wastes, adopted resolution 1995/81 in which it noted with grave concern that the increasing rate of illicit dumping of toxic and dangerous products and wastes in developing countries continues adversely to affect the human rights to life and health of individuals in those countries, and decided to appoint, for a three-year period, a special rapporteur with a mandate to:

(a) Investigate and examine the effects of the illicit dumping of toxic and dangerous products and wastes in African and other developing countries on the enjoyment of human rights, in particular on the human rights to life and health of everyone;

(b) Investigate, monitor, examine and receive communications and gather information on the illicit traffic and dumping of toxic and dangerous products and wastes in African and other developing countries;

(c) Make recommendations and proposals on adequate measures to control, reduce and eradicate the illicit traffic in, transfer to and dumping of toxic and dangerous products and wastes in African and other developing countries;

(d) Produce annually a list of the countries and transnational corporations engaged in the illicit dumping of toxic and dangerous products and wastes in African and other developing countries and a census of human persons killed, maimed or otherwise injured in the developing countries through this heinous act.

The Commission requested the Special Rapporteur to submit her findings, including the list referred to in (d) above, to the Commission at its fifty-second session.

2. By its decision 1995/288 of 25 July 1995, the Economic and Social Council endorsed Commission resolution 1995/81.

3. The Chairman of the fifty-first session of the Commission on Human Rights, after consultation with the members of the Bureau, appointed Mrs. Fatma Zohra Ksentini (Algeria) as Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights.

4. In its resolution, the Commission urged the international community to give the necessary support to developing countries, upon their request, in their efforts to implement the provisions of existing international and regional instruments governing the transboundary movement and dumping of toxic and dangerous products and wastes in order to protect and promote the human rights to life and good health of all. The Commission requested the Secretary-General to establish in the Centre for Human Rights a focal unit with the specific task of following up on the findings of the Special Rapporteur and other issues related to the adverse effects of the illicit

movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights. Furthermore, it urged all Governments, specialized agencies and non-governmental organizations to cooperate fully with the Special Rapporteur, in particular by providing information on the movement and dumping of toxic and dangerous products and wastes.

5. The Special Rapporteur submits the present preliminary report in accordance with resolution 1995/81.

I. MANDATE AND WORKING METHODS OF THE SPECIAL RAPPORTEUR

6. In this preliminary report, the Special Rapporteur presents her reflections upon and understanding of the mandate in general and the standards to which she will refer in carrying out her mandate.

7. The mandate established by Commission resolution 1995/81 is consistent with the special thematic procedures; the methodology applied would be similar to that followed by other thematic rapporteurs. The Special Rapporteur has had an opportunity to examine the methods of work adopted by them and has taken note of the joint declaration of the independent experts responsible for the special procedures for the protection of human rights submitted to the World Conference on Human Rights (A/CONF.157/9), which summarizes the scope and objectives of special procedures. Consequently, the Special Rapporteur considers it desirable to examine thoroughly all aspects relevant to the working methods adopted by the special rapporteurs within the framework of their respective mandates.

8. The first act of the Special Rapporteur was to participate in a meeting of special rapporteurs/representatives/experts and chairmen of working groups of the special procedures of the Commission on Human Rights which was held at Geneva from 29 to 31 May 1995, in accordance with Part II, paragraph 95 of the Vienna Declaration and Programme of Action. The meeting provided the Special Rapporteur with an opportunity to exchange views and discuss issues of mutual concern with other special rapporteurs, the High Commissioner for Human Rights and the Assistant Secretary-General for Human Rights (see E/CN.4/1995/5, annex). On that occasion, the Special Rapporteur also held consultations with the Centre for Human Rights as well as with some Geneva-based intergovernmental and non-governmental organizations on specific issues related to her mandate.

9. On 30 August 1995, the Secretary-General sent a note verbale to Governments and letters to specialized agencies and NGOs transmitting the Special Rapporteur's request for relevant information in accordance with paragraph 11 of resolution 1995/81.

10. At the time of submission of the present report, replies have been received from the following Governments: Angola, Germany, Jordan, Nigeria, Philippines, Slovakia, United Kingdom of Great Britain and Northern Ireland.

11. Responses were received from the following United Nations bodies and specialized agencies: Department for Policy Coordination and Sustainable Development, United Nations Conference on Trade and Development, United Nations Environment Programme, United Nations University, Food and

Agriculture Organization of the United Nations, United Nations Educational, Scientific and Cultural Organization, World Health Organization, World Bank, United Nations Industrial Development Organization, International Atomic Energy Agency.

12. The following intergovernmental organizations also replied: League of Arab States, Organization for Economic Cooperation and Development.

13. Responses were received from the following non-governmental organizations: International Confederation of Free Trade Unions; International Federation of Chemical, Energy and General Workers' Unions; International Indian Treaty Council; International Transport Workers' Federation; National Aboriginal and Islander Legal Service Secretariat; Servicio Paz y Justicia en América Latina; Sierra Club Legal Defense Fund, Inc.

14. The analysis contained in the present report on aspects of and factors contributing to the illicit traffic, transfer and dumping of toxic and dangerous products and wastes is based on information received in response to the note verbale and letters mentioned above.

15. The Special Rapporteur draws the attention of the Commission to the fact that the information received has not yet been fully explored. As a first step, it has served to identify the main trends of the problem. The Special Rapporteur will use the information received mainly in her second and third reports when reporting on specific incidents and individual cases and in producing the list of countries and transnational corporations engaged in the illicit practice.

16. The Special Rapporteur considers that her mandate has three main components. The first consists in outlining the elements of the problem and conducting a general survey of issues involving the human rights of the victims, with special emphasis on difficulties encountered by African and other developing countries. The Special Rapporteur is also mandated to make recommendations and proposals on adequate measures to control, reduce and eradicate the problem. The second component consists in identifying, investigating and monitoring actual situations, specific incidents and individual cases, including allegations which may be forwarded to the Special Rapporteur. The third consists in producing annually a list of countries and transnational corporations engaged in the illicit traffic of toxic and dangerous products and wastes to developing countries.

17. The Special Rapporteur will adopt the following method to gather the information necessary for the fulfilment of her mandate as defined in paragraphs 7 and 8 of resolution 1995/81:

(a) Prepare a questionnaire to be addressed to Governments on all aspects of the problem raised in resolution 1995/81 and developed in the present report;

(b) Request relevant information from United Nations bodies and specialized agencies, intergovernmental organizations and non-governmental organizations dealing with the subject matter;

(c) Undertake missions in situ to the five geopolitical regions to investigate allegations and to supplement information required to fulfil her mandate.

18. The Special Rapporteur intends to establish a dialogue with Governments concerning allegations and prospective field missions with a view to assisting the Governments concerned in finding appropriate solutions to deal with the illicit traffic and dumping of toxic and dangerous products and wastes, especially in African and other developing countries.

19. The procedure adopted for considering communications will be similar to that used in other thematic procedures. Accordingly, the Special Rapporteur will transmit to the State concerned information on case summaries concerning alleged violations, in order to induce the national authority to undertake the necessary investigations on the reported incidents or individual cases. The Special Rapporteur will also ask to be kept informed of the outcome of the investigations.

20. Despite the existence of a wide variety of international and domestic legal instruments and established procedures that address the movement and dumping of toxic and dangerous products and wastes, none addresses the needs and concerns of the human victims of toxic contamination. The Special Rapporteur will seek to address issues that are not adequately dealt with elsewhere, giving special emphasis to the human rights dimension, the issue of vulnerable groups and the perspective of victims.

21. The Commission on Human Rights has adopted several resolutions inviting working groups and special rapporteurs to pay particular attention to other issues which could be relevant to their mandate. Accordingly, the Special Rapporteur will endeavour to:

(a) Address the situation of persons detained or subjected to violence, ill-treatment or discrimination for having exercised the right to freedom of opinion and expression. Indeed, the right to information is particularly relevant in the field of protection of the environment;

(b) Consider, as appropriate, the consequences of acts, methods and practices of terrorist groups. The illicit movement and dumping of toxic and dangerous products and wastes may involve organized crime, criminal activities and terrorist groups;

(c) Seek information on situations which could lead to internal displacement and to include relevant information and recommendations thereon in the reports to the Commission. Indeed, inadequate development projects involving the transfer of inappropriate technology, export of waste-intensive industries and movement of toxic and dangerous products may induce forced evictions and displace persons or groups;

(d) Include in the reports gender-disaggregated data and available information on human rights violations against women. Such data will, to the extent possible, be included in the second and third reports, with an emphasis on women as victims of environmental degradation resulting from the illicit movement and dumping of toxic and dangerous products and wastes;

(e) Examine, within the framework of her mandate, other relevant cases and situations such as disappearances, disability, discrimination, children's rights and migrant workers' rights;

(f) Make recommendations, whenever appropriate, and proposals for specific projects to be realized under the programme of technical cooperation;

(g) Give increased attention to the issue of the right to restitution, compensation and rehabilitation of victims, including the questions of corruption and impunity;

(h) Report on cases or allegations of intimidation or reprisal and hampering of access to United Nations human rights procedures, and take urgent steps to help prevent such hampering. In accordance with existing practices of other United Nations special procedures, the Special Rapporteur intends, whenever appropriate, to use the urgent action procedure.

II. LEGAL FRAMEWORK AND INTERNATIONAL STANDARDS

A. Background

22. In the 1970s, increased generation of hazardous wastes and growing public awareness of its effects resulted in the introduction in many industrialized countries of extensive legislation regulating the treatment of wastes. By the early 1980s, member States of the Organization for Economic Cooperation and Development (OECD) were, together, generating 300 million tons of waste annually, 1/ which were becoming increasingly difficult and costly to dispose of. Disparities in domestic legal standards and the costs of disposing of toxic wastes provoked multiple movements of wastes across frontiers. It is estimated that by 1983, 15 per cent of the world's hazardous waste, some 45 million tons, was disposed of outside the generating country. 2/ At that time, most of the waste trade took place among OECD countries. By 1989, the United Nations Environment Programme estimated that approximately 20 per cent of the hazardous waste generated in and exported from industrialized countries was being shipped to developing countries because "high levels of foreign debt coupled with the worldwide collapse in commodity prices made the import of hazardous waste an attractive proposal for many cash starved countries of the Third World". 3/

23. In 1984, when 41 barrels of dioxin from Seveso were reported lost, the OECD issued a directive requiring member countries to adopt national legislation to monitor and control inter-State shipments of wastes, followed by another in June 1986 on waste exports from the OECD zone. The European Economic Community adopted the same set of principles in 1984 and 1986 respectively.

24. The accumulation of cross-border waste shipments, specially to developing countries, convinced Governments that international action was needed. As North-South waste shipments increased, dangerous and illegal disposal of wastes were discovered in several developing countries. As reported in the study of the Special Rapporteur on human rights and the environment (E/CN.4/Sub.2/1994/9 and Corr.1) until the mid-1980s, 80 per cent of the trade in hazardous waste was between developed countries. 4/ In 1988,

from 2 to 2.5 million tons of waste were transported within European member countries of OECD. 5/ Essentially, it was only after 1986 that the North-South trend emerged. Greenpeace has pointed out that between 1986 and 1988 over 6 million tons of hazardous waste were exported from the developed countries to the developing countries and the countries of Eastern Europe, in particular Romania and Hungary. 6/ It also asserted that of the 100 to 300 million tons of waste produced each year by developed countries, some 50 million tons were shipped to Africa. 7/

25. While the local capacity for hazardous waste storage and elimination in developed countries is steadily declining, the volume of waste produced continues to rise. Thus, the European Union is reported to have the capacity to eliminate an estimated 10 million tons of waste whereas it produces as much as 30 million tons a year. 8/

26. The scandals of 1987 and 1988, in particular revelations concerning contracts between Western companies and African countries to which the companies concerned paid ridiculously low sums for land on which to dispose toxic wastes, prompted developing countries, particularly African countries, to react. Within this context, the Council of Ministers of the Organization of African Unity declared, in resolution 1153 (XLVIII) of 25 May 1988, that such dumping was "a crime against Africa and the African people". 9/

27. Similarly, on 7 December 1988, the United Nations General Assembly condemned the dumping of nuclear and industrial wastes in Africa in its resolution 43/75 T entitled "Dumping of radioactive wastes".

28. Simultaneously, developing countries began to draft a convention to regulate the transboundary movement of hazardous wastes in order to implement fully the principles already developed at the 1972 United Nations Conference on the Human Environment and by the United Nations Development Programme. 10/

29. The 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal was the result of a compromise between advocates of a complete ban on transboundary movements of wastes and those who wished to define the legal framework and conditions for the international transfer of wastes. The Convention marks a step forward in the assumption of responsibility for the problem, although it was considered inadequate by many countries, particularly those in Africa, which drafted the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement of All Forms of Hazardous Wastes within Africa, adopted on 30 January 1991.

30. At their third meeting in 1995, States parties to the Basel Convention introduced an amendment to the Convention banning exports of hazardous wastes, including those destined for recycling, from OECD to non-OECD countries. The ban will come into force at the end of 1997.

B. Basel Convention

31. The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal was adopted on 22 March 1989 by the 116 States participating in the Conference of Plenipotentiaries on the Global

Convention on the Control of Transboundary Movements of Hazardous Wastes, convened by the Executive Director of the United Nations Environment Programme. Eighty-six countries and the European Community are parties to the Basel Convention, which entered into force on 5 May 1992. The main objectives of the Convention are to reduce transboundary movements of hazardous wastes and other wastes to the minimum consistent with their environmentally sound management; to treat and dispose of hazardous wastes and other wastes as close as possible to the source of generation in an environmentally sound manner; to minimize the generation of hazardous wastes and other wastes (in terms of both quantity and potential hazard).

32. Some of the key elements of the regulatory system of the Basel Convention are prior informed consent, the prohibition to export to a country which is not a Contracting Party to the Convention, and the legal provisions for duty to re-import and the responsibility of States involved in the transboundary movements.

33. Under the provisions of the Basel Convention:

(a) "[A]ny State has the sovereign right to ban the entry or disposal of foreign hazardous wastes and other wastes in its territory" (sixth preambular paragraph; see also art. 4 (1));

(b) "Each Party shall ... prevent the import of hazardous wastes and other wastes if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner" (art. 4 (2) (g));

(c) "Parties shall prohibit or shall not permit the export of hazardous wastes and other wastes to the Parties which have prohibited the import of such wastes" when they have been informed of such decision (art. 4 (1) (b));

(d) "Each Party shall ... not allow the export of hazardous wastes or other wastes to a State or group of States belonging to an economic and/or political integration organization that are Parties, particularly developing countries, which have prohibited by their legislation, all imports" (art. 4 (2) (e)).

34. The general obligations under the Convention include, inter alia:

(a) "Each Party shall ... prevent the import of hazardous wastes and other wastes if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner" (art. 4 (2) (g));

(b) "A Party shall not permit hazardous wastes or other wastes to be ... imported from a non-Party" (art. 4 (5)). Notwithstanding that provision, "Parties may enter into bilateral, multilateral, or regional agreements or arrangements regarding transboundary movement of hazardous wastes ... provided that such agreements or arrangements do not derogate from the environmentally sound management of hazardous wastes and other wastes as required by this Convention. These agreements or arrangements shall stipulate provisions which are not less environmentally sound than those provided for by this Convention, in particular taking into account the interests of developing countries" (art. 11 (1));

(c) "Each Party shall ... ensure that persons involved in the management of hazardous wastes or other wastes within it take such steps as are necessary to prevent pollution due to hazardous wastes and other wastes arising from such management and, if such pollution occurs, to minimize the consequences thereof for human health and the environment" (art. 4 (2) (c));

(d) "[E]ach Party shall prohibit all persons under its national jurisdiction from transporting or disposing of hazardous wastes or other wastes unless such persons are authorized or allowed to perform such types of operations" (art. 4 (7) (a)).

35. Under the Basel Convention, any transboundary movement of hazardous wastes or other wastes requires prior written notification of countries of import and transit (art. 6 (1)) and the written consent of these countries (art. 6 (2)), a system referred to as Prior Informed Consent (PIC). Under article 4 (1) (c), "Parties shall prohibit or shall not permit the export of hazardous wastes and other wastes if the State of import does not consent in writing to the specific import, in the case where that State of import has not prohibited the import of such wastes". Article 6 of the Convention stipulates that the State of export shall not allow the transboundary movement to commence until it has received from the State of import:

(a) "Written consent" and "confirmation of the existence of a contract between the exporter and the disposer specifying environmentally sound management of the wastes in question" (art. 6 (3) (a) (b)); and

(b) "The written consent of the State of transit. However, if at any time a Party decides not to require prior written consent, either generally or under specific conditions, for transit transboundary movements of hazardous wastes or other wastes, or modifies its requirements in this respect, it shall forthwith inform the other Parties of its decision pursuant to article 13. In this latter case, if no response is received by the State of export within 60 days of the receipt of a given notification by the State of transit, the State of export may allow the export to proceed through the State of transit" (art. 6 (4)).

36. States may engage in the transboundary movement of hazardous or other wastes only if there does not exist a more environmentally sound alternative, and if it takes place between Parties to the Convention none of which has prohibited the import of such wastes.

37. The States of export shall inform the competent authority of the State of import of any intended transboundary movement of hazardous or other wastes, in accordance with the notification procedure. The State of export shall not allow the transboundary movement to commence until it has received the necessary responses from the notifier or the State of transit. When a transboundary movement of hazardous wastes or other wastes to which the consent of the State concerned has been given, subject to the provisions of the Convention, cannot be completed in accordance with the terms of the contract, the State of export may be obliged to re-import the wastes in question. Article 8 provides that, in such cases, "the State of export shall ensure that the wastes in question are taken back into the State of export, by the exporter, if alternative arrangements cannot be made for their disposal in

an environmentally sound manner, within 90 days from the time that the importing States informed the State of export and the Secretariat, or such other period of time as the States concerned agree".

38. The Basel Convention deems to be "illegal traffic" "any transboundary movement of hazardous wastes or other wastes (a) without notification pursuant to the provisions of this Convention to all States concerned; or (b) without the consent pursuant to the provisions of this Convention of a State concerned; or (c) with consent obtained from States concerned through falsification, misrepresentation or fraud; or (d) that does not conform in a material way with the documents; or (e) that results in deliberate disposal (e.g. dumping) of hazardous wastes or other wastes in contravention of this Convention and of general principles of international law" (art. 9 (1)).

39. "Illegal traffic in hazardous wastes or other wastes is criminal" according to article 4 (3) and, under article 9 (5), each Party is required to "introduce appropriate national/domestic legislation to prevent and punish illegal traffic". 11/ Moreover, the Convention provides that when the illegal traffic is "the result of conduct on the part of the exporter or generator", the State of export "shall ensure that the wastes in question are (a) taken back by the exporter or generator or, if necessary, by itself into the State of export, or, if impracticable, (b) are otherwise disposed of in accordance with the provisions of this Convention, within 30 days from the time the State of export has been informed about the illegal traffic or such other period of time as States concerned may agree" (art. 9 (2)).

40. If the traffic is deemed illegal "as the result of conduct on the part of the importer or disposer", the State of import "shall ensure that the wastes in question are disposed of in an environmentally sound manner by the importer or disposer or, if necessary, by itself within 30 days from the time the illegal traffic has come to the attention of the State of import or such other period of time as the States concerned may agree" (art. 9 (3)). However, where responsibility for the illegal traffic cannot be assigned either to the exporter or generator or to the importer or disposer, "the Parties concerned or other Parties, as appropriate, shall ensure, through cooperation, that the wastes in question are disposed of as soon as possible in an environmentally sound manner either in the State of export or the State of import or elsewhere as appropriate" (art. 9 (4)).

41. Besides the notification and manifest procedures, the Basel Convention also emphasizes exchange and transmission of information to the Conference of the Parties (art. 15), to the Secretariat (art. 16) and to States (art. 13).

C. Bamako Convention

42. The Bamako Convention on the Ban of the Import of Hazardous Wastes into Africa and on the Control of their Transboundary Movements within Africa was adopted at Bamako, Mali, on 30 January 1991 by member States of the Organization of African Unity (OAU) because of inadequacies in the Basel Convention with regard to developing countries, in particular the absence of a ban on the export of toxics towards developing countries. The Bamako Convention is not a substitute, but a regional complement to the Basel

Convention which allows for the establishment of regional agreements equal to or stronger than its own provisions (art. 11 of the Basel Convention).

43. The Parties to the Convention, "aware of the risk of damage to human health and the environment caused by transboundary movements of hazardous wastes" and "further recognizing the sovereignty of States to ban the importation into, and the transit through, their territory, of hazardous wastes and substances for human health and environmental reasons", decided to introduce:

(a) a hazardous waste import ban; accordingly, "All Parties shall take appropriate legal, administrative and other measures within the area under their jurisdiction to prohibit the import of all hazardous wastes, for any reason, into Africa from non-Contracting Parties. Such import shall be deemed illegal and a criminal act" (art. 4 (1));

(b) a ban on dumping of hazardous wastes at sea, internal waters and waterways; consequently, States parties shall "adopt legal, administrative and other appropriate measures to control all carriers from non-Parties, and prohibit the dumping at sea of hazardous wastes [...]" (art. 4 (2) (a)).

44. Concerning the production of wastes in Africa, the Convention provides that each party shall, inter alia, "impose unlimited liability as well as joint and several liability on hazardous waste generators" (art. 4 (3) (b)) and "strive to adopt and implement the preventive, precautionary approach to pollution problems [...]" (art. 4 (3) (f)).

45. Whereas the Basel Convention excludes radioactive wastes, "wastes which, as a result of being radioactive, are subject to any international control systems, including international instruments, applying specifically to radioactive materials, are included in the scope of this Convention" (art. 2 (2)). It also provides that "the issue of the transfer to Africa of polluting technologies shall be kept under systematic review by the Secretariat of the Conference and periodic reports made to the Conference of the Parties" (art. 4 (3) (h)).

46. The Bamako Convention also establishes a system of Prior Informed Consent and notification procedures for proposed transboundary movement of hazardous wastes. The State of export may not allow the transboundary movement until it has received written consent by the State of import and written confirmation of the existence of a contract between the exporter and the disposer specifying environmentally sound management of the wastes in question (art. 6).

47. Article 8 imposes a duty to re-import:

> "When a transboundary movement of hazardous wastes to which the consent of the States concerned has been given, subject to the provisions of this Convention, cannot be completed in accordance with the terms of the contract, the State of export shall ensure that the wastes in question are taken back into the State of export, by the exporter, if alternative arrangements cannot be made for their disposal in an environmentally sound manner within a maximum of 90 days from the time

that the importing State informed the State of export and the Secretariat. To this end, the State of export and any State of transit shall not oppose, hinder or prevent the return of those wastes to the State of export".

48. Article 9 on "Illegal traffic" reads as follows:

"1. For the purpose of this Convention, any transboundary movement of hazardous wastes ... a) if carried out without notification, pursuant to the provisions of this Convention, to all States concerned; or b) if carried out without the consent, pursuant to the provision of this Convention, of a State concerned; or c) if consent is obtained from States concerned through falsification, misrepresentation or fraud; or d) if it does not conform in a material way with the documents; or e) if it results in deliberate disposal of hazardous wastes in contravention of this Convention and of general principles of international law.

"2. Each State shall introduce appropriate national legislation for imposing criminal penalties on all persons who have planned, carried out, or assisted in such illegal imports. Such penalties shall be sufficiently high to both punish and deter such conduct.

"3. In case of a transboundary movement of hazardous wastes deemed to be illegal traffic as the result of conduct on the part of the exporter or generator the State of export shall ensure that the wastes in question are taken back by the exporter or generator or if necessary by itself into the State of export, within 30 days from the time the State of export has been informed about the illegal traffic. To this end the State concerned shall not oppose, hinder or prevent the return of those wastes to the State of export and appropriate legal action shall be taken against the contravenor(s).

"4. In the case of a transboundary movement of hazardous wastes deemed to be illegal traffic as the result of conduct on the part of the importer or disposer, the State of import shall ensure that the wastes in question are returned to the exporter by the importer and that legal proceedings according to the provisions of this Convention are taken against the contravenor(s)."

D. Code of Practice on the International Transboundary Movement of Radioactive Waste

49. On 21 September 1990, the General Conference of the International Atomic Energy Agency, by resolution GC(XXXIV)/RES/530, adopted the Code of Practice on the Transboundary Movement of Radioactive Waste. The Code of Practice was elaborated by a technical working group of experts established pursuant to resolution GC(XXXII)/RES/490 adopted by the General Conference in 1988. The Group of Experts decided that the Code of Practice "should serve as guidelines to States for, inter alia, the development and harmonization of policies and laws on the international transboundary movement of radioactive waste".

50. Among the basic principles recognized are:

"1. Every State should take the appropriate steps necessary to ensure that radioactive waste within its territory, or under its jurisdiction or control is safely managed and disposed of, to ensure the protection of human health and the environment;

"2. Every State should take the appropriate steps necessary to minimize the amount of radioactive waste, taking into account social, environmental, technological and economic considerations;

"3. It is the sovereign right of every State to prohibit the movement of radioactive waste into, from or through its territory;

"4. Every State involved in the international transboundary movement of radioactive waste should take the appropriate steps necessary to ensure that such movement is undertaken in a manner consistent with international safety standards;

"5. Every State should take the appropriate steps necessary to ensure that, subject to the relevant norms of international law, the international transboundary movement of radioactive waste takes place only with the prior notification and consent of the sending, receiving and transit States in accordance with their respective laws and regulations;

"...

"7. No receiving State should permit the receipt of radioactive waste for management or disposal unless it has the administrative and technical capacity and regulatory structure to manage and dispose of such waste in a manner consistent with international safety standards. The sending State should satisfy itself in accordance with the receiving State's consent that the above requirement is met prior to the international transboundary movement of radioactive waste;

"8. Every State should take the appropriate steps to introduce into its national laws and regulations relevant provisions as necessary for liability, compensation or other remedies for damage that could arise from the international transboundary movement of radioactive waste;

"9. Every State should take the appropriate steps necessary, including the adoption of laws and regulations, to ensure that the international transboundary movement of radioactive waste is carried out in accordance with this Code."

51. Concerning international cooperation, the Code provides that the sending State should take the appropriate steps necessary to permit readmission into its territory of any radioactive waste previously transferred from its territory if such transfer is not or cannot be completed in conformity with this Code, unless an alternative safe arrangement can be made.

52. In its reply to the Special Rapporteur, the International Atomic Energy Agency indicated that the Code is non-binding but provides countries with international guidelines for transboundary movement of radioactive wastes. Elements of the Code are likely to be incorporated into the Convention on the Safe Management of Radioactive Waste currently under preparation with the IAEA acting as the secretariat.

E. Other international instruments

53. The development of international law in the area of hazardous waste began with the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (1972), which prohibits the dumping of hazardous waste in the oceans, and the United Nations Convention on the Law of the Sea (1982), in which the signatory States agreed to protect the marine environment by, among other measures, dealing with pollution of the marine environment and minimizing the release of toxic, harmful or noxious substances.

54. In addition to these treaties and those discussed above, there also exist numerous sets of rules on the transport of waste, such as those issued within the OECD and the European Communities. Also noteworthy are the developments at the regional and national levels described in the following paragraphs.

55. Finalization by the Council of Europe of a draft convention for the protection of the environment through criminal law. 12/ Article 2 of the Convention requires each party to adopt appropriate measures to establish as criminal offences under its domestic law when committed intentionally, inter alia, "the unlawful disposal, treatment, storage, transport, export or import of hazardous waste, which is likely to cause death or serious injury to any person or substantial damage to persons or to the quality of the air, the soil, the water bodies, animals or plants; [...] the unlawful manufacture, treatment, storage, use, transport, export or import of nuclear materials or other radioactive substances which is likely to cause death or serious injury to any person or substantial damage to the quality of the air, the soil, the water, animals or plants [...]". Article 3 requires each party to adopt appropriate measures to establish as criminal offences under its domestic law, when committed with gross negligence, the offences enumerated in article 2. Furthermore, each party shall adopt measures making these offences "punishable by criminal sanctions which take into account the serious nature of these offences. Such sanctions shall include imprisonment and may include pecuniary sanctions and reinstatement of the environment" (art. 6).

56. Article 9 on "Corporate liability" reads as follows:

> "1. Each Party shall adopt such appropriate measures as may be necessary to enable it to impose criminal or administrative sanctions or measures on legal persons on whose behalf an offence referred to in Article 2 or 3 has been committed by its organ, a member of its organ or another representative.
>
> "2. Corporate liability under subparagraph 1 of this Article shall not exclude criminal proceedings against a natural person [...]."

57. On "Rights for groups to participate in proceedings" provision is made for each party, at any time, in a declaration, addressed to the Secretary-General of the Council of Europe, to "declare that it will, in accordance with national law, grant any group, foundation or association which, according to its statutes, aims at the protection of the environment the right to participate in proceedings concerning criminal offences established in accordance with this Convention" (art. 11).

58. Progress accomplished by the group of experts from Mediterranean countries in the preparation of a protocol on the prevention of pollution of the Mediterranean Sea resulting from the transboundary movement of hazardous wastes and their disposal. The protocol was requested by the 7th Ordinary Meeting of the Contracting Parties to the Convention for the Protection of the Mediterranean Sea against Pollution, adopted in Barcelona on 16 February 1976. The draft protocol 13/ recognizes that "any State has the sovereign right to ban the entry, transit or disposal of hazardous wastes in its territory". The parties shall take all appropriate measures "to prevent and eliminate pollution of the Mediterranean Sea area which can be caused by transboundary movements and disposal of hazardous wastes" [and] "to reduce to a minimum, and where possible eliminate, the generation of hazardous wastes [as well as] the movement of hazardous wastes in the Mediterranean". To achieve this goal, parties have the right "individually or collectively to ban the import of hazardous wastes. Other Parties shall respect this sovereign decision and not permit the export of hazardous wastes to States which have prohibited their import".

59. The draft protocol also contains provisions concerning transboundary movement and notification procedures; the duty to reimport; illegal traffic; information, including information to and participation of the public; liability and compensation; and, assistance to developing countries.

60. Adoption by the Council of Europe of the Convention on civil liability for damage resulting from activities dangerous to the environment (Lugano, 21 June 1993). 14/ The Convention "aims at ensuring adequate compensation for damage resulting from activities dangerous to the environment and also provides for means of prevention and reinstatement" (art. 1). Dangerous activities listed in article 2 include "the production, handling, storage, use or discharge of one or more dangerous substances or any operation of a similar nature dealing with such substances; [...] the operation of an installation or site for the incineration, treatment, handling or recycling of waste [...]".

F. Other relevant norms, principles and guidelines

61. As noted in the final report of the Special Rapporteur of the Sub-Commission on human rights and the environment (E/CN.4/Sub.2/1994/9, para. 25) regulation of global transboundary pollution has made it possible to define a range of relevant principles which, according to Michel Prieur, "may be considered as binding upon States". 15/ In this respect he cites the following principles:

Before engaging in any activity that may have perceptible effects on the environment of another State, under whose jurisdiction or control the activity is to take place it must assess its consequences;

It must inform the other State and transmit to it relevant details of the project, provided they constitute information and data whose transmission is not prohibited by national legislation or by relevant international treaties;

In the case of activities liable to damage the environment of another State, it must consult the State concerned if the latter so requests;

States must urgently inform the other States likely to be affected, cooperate by providing mutual assistance in order to take the necessary preventive measures and, where necessary, eliminate, mitigate or repair the environmentally harmful consequences;

If the activities that take place within the jurisdiction or under the control of a State damage, or are liable to damage, the environment of another State, the latter's residents who are affected or liable to be affected by them must be able to have access to the administrative and judicial procedures of the State in which the environmental damage originates, on the same conditions as residents of that State. If persons living abroad have already suffered damage, the same remedies must be available to them as to residents. During these procedures, non-residents must receive the same treatment as residents;

A State must not discriminate in its legislation or in the application of that legislation on the basis of the location of the environmentally harmful effects, by applying less stringent rules to activities whose adverse environmental effects are felt beyond its frontiers.

62. The Stockholm Declaration adopted at the United Nations Conference on the Human Environment (Stockholm, 1972), 16/ contains 26 principles which represent a set of values whose fundamental nature is acknowledged by the international community. Noteworthy are the following principles:

"Principle 1

"Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality which permits a life of dignity and well-being, and bears a solemn responsibility to protect and improve the environment for present and future generations. In this respect, policies promoting or perpetuating apartheid, racial segregation, discrimination, colonial and other forms of oppression and foreign domination stand condemned and must be eliminated.

"Principle 6

"The discharge of toxic substances or of other substances and the release of heat, in such quantities or concentrations as to exceed the capacity of the environment to render them harmless, must be halted in order to ensure that serious or irreversible damage is not inflicted upon ecosystems. The just struggle of the peoples of all countries against pollution should be supported.

"Principle 7

"States shall take all possible steps to prevent pollution of the seas by substances that are liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea.

"Principle 11

"The environmental policies of all States should enhance and not adversely affect the present or future development potential of developing countries, nor should they hamper the attainment of better living conditions for all, and appropriate steps should be taken by States and international organizations with a view to reaching agreement on meeting the possible national and international economic consequences resulting from the application of environmental measures.

"Principle 21

"States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

"Principle 22

"States shall cooperate to develop further the international law regarding liability and compensation for the victims of pollution and other environmental damage caused by activities within the jurisdiction or control of such States to areas beyond their jurisdiction.

"Principle 24

"International matters concerning the protection and improvement of the environment should be handled in a cooperative spirit by all countries, big or small, on a equal footing. Cooperation through multilateral or bilateral arrangements or other appropriate means is essential to effectively control, prevent, reduce and eliminate adverse environmental effects resulting from activities conducted in all spheres, in such a way that due account is taken of the sovereignty and interests of all States.

"Principle 26

"Man and his environment must be spared the effects of nuclear weapons and all other means of mass destruction. States must strive to reach prompt agreement, in the relevant international organs, on the elimination and complete destruction of such weapons."

63. The concept of international State responsibility contained in principle 21 is also present in principle 12 of the decision of the Governing

Council of the United Nations Environment Programme concerning shared natural resources 19 May 1978. 17/ It is also evident, in the provisions of the Charter of Economic Rights and Duties of States (General Assembly resolution 3281 (XXIX) of 12 December 1974) which asserts the sovereign right of States over their wealth and natural resources, while affirming their responsibility to protect and preserve the environment for present and future generations. The Charter also emphasizes the special responsibility of occupying Powers over territories under their dominations and the obligation to preserve such territories from the plundering of their natural resources.

64. The World Charter for Nature (General Assembly resolution 37/7 of 28 October 1982) proclaims 24 principles of conservation "by which all human conduct affecting nature is to be guided and judged". Principle 11 concerns in particular the control of activities which might have an impact on nature, assessment of their consequences and environmental impact studies of development projects, and the rehabilitation of degraded areas for purposes in accord with their natural potential and compatible with the well-being of affected populations.

65. At the 1992 United Nations Conference on Environment and Development, the "Earth Summit", the international community expressed its concern that part of the international movement of hazardous wastes was in violation of national legislation and of existing international instruments, to the detriment of the ecology and public health of all countries, in particular those of developing countries.

66. The following objectives were adopted within the framework of Agenda 21 in order to prevent the illegal transboundary movement of hazardous wastes: (a) to reinforce national capacities to detect and halt any illegal attempt to introduce toxic and dangerous products into the territory of any State, in contravention of national legislation and relevant international legal instruments; (b) to assist all countries, in particular developing countries, in obtaining all appropriate information concerning illegal traffic in toxic and dangerous products; (c) to cooperate, within the framework of the 1989 Basel Convention, in assisting countries that suffer the consequences of illegal traffic.

67. Governments were also urged to exchange information on illegal transboundary movements of hazardous wastes.

68. As pointed out in a commentary submitted to the Special Rapporteur by the Sierra Club Legal Defense Fund Inc. international law includes, in addition to conventional law, customary law and general principles of international law (cf. art. 38 of the Statute of the International Court of Justice). Customary international law relating to the environment revolves to a great extent around the principle of sic utere tuo ut alienum non laedas (use your own property in such a manner as not to injure that of another). In the international context, this principle means States must refrain from acts that would cause injury to persons or property located in the territory of another State. 18/

69. The sic utere principle received perhaps its most celebrated application to the environmental context in the Trial Smelter Arbitration of 1938 between

the United States and Canada. 19/ The Trial Smelter case arose because of emissions of sulphur dioxide into the atmosphere by a Canadian corporation which caused environmental damage in the State of Washington. The arbitration tribunal held that transboundary pollution violated customary international law and that damages sustained because of that harm were compensable.

70. The International Court of Justice reaffirmed the sic utere principle in the Corfu Channel case, where the court held Albania internationally responsible for failing to warn foreign ships of mines laid in Albania's territorial waters. 20/ According to this principle, a country that engages in or permits the production, movement or disposal of toxic substances in a way that causes harm to another sovereign thereby violates international law.

G. Human rights norms and standards

71. For a discussion on this subject, see chapter V.

H. Domestic law

72. In addition to the various international instruments discussed above, national law is also relevant to the conduct of the mandate of the Special Rapporteur, bearing in mind the general principles of international law and the specific provisions of the main conventions concerning toxic wastes which recognize explicitly that every State has the sovereign right to ban the entry or disposal of foreign hazardous wastes and other wastes in its territory (see, inter alia the sixth preambular paragraph and art. 4 (1) of the Basel Convention; the provisions of the Bamako Convention as well as those of the Code of Practice on the International Transboundary Movement of Radioactive Waste).

III. ASPECTS OF THE ILLICIT TRAFFIC IN, TRANSFER AND DUMPING OF TOXIC AND DANGEROUS PRODUCTS AND WASTES

73. According to information made available to the Special Rapporteur, despite efforts of most developing countries to halt international movements in hazardous wastes and products, there has been an increase in the export of hazardous wastes from industrialized countries, attributed to the failure of industrialized countries to stop waste exports, the constant growth in waste production in these countries and, more importantly, the proliferation of waste "recycling" programmes. 21/

74. The traffic in and dumping of toxic and dangerous products and wastes may take various forms, reflecting an adaptation of waste traders to changing conditions.

A. Outright dumping of hazardous wastes for disposal or storage

75. The most commonly used disposal options are land filling and incineration. In the highly industrialized countries, both these methods are being subjected to restrictions, bans or phase-outs, hence, an increase in the pressure to export such wastes to poor and remote areas. According to

information received, more than 3.6 million tons of waste shipments were made from the OECD countries to non-OECD between 1986 and 1988 alone. 22/

76. Developing countries, in particular, lack proper hazardous waste management infrastructure. Often, disposal occurs in congested areas close to industrial settlements, polluting surface and groundwater and posing a direct threat to the countries' supply of drinking water and, ultimately, to human, animal and plant life.

B. Trade in hazardous wastes for recycling or further use

77. In recent years, there has been a rapid increase in the movement from industrialized countries to developing countries of hazardous wastes destined for recycling or recovery operations. According to a recent report, "95% of hazardous wastes subject to transboundary movement between OECD and non-OECD countries are destined for recovery operations". It also points out that "the frequency and quantity of hazardous wastes exported for final disposal is not likely to continue to increase significantly". 23/

78. The movement of hazardous wastes may either involve a false claim of "recycling" or "further use", or may involve genuine recycling operations.

1. Sham "recycling" or "further use"

79. While the need for recycling of old materials is no longer seriously doubted anywhere, "recycling", as a number of cases illustrate, can become a cover for dumping of hazardous waste. In the 1980s, exporters of toxic and dangerous wastes did not attempt to conceal their primary aim of simply depositing the wastes. Due to growing international pressure, however, waste traders are increasingly disguising such wastes. More and more, hazardous wastes are traded across frontiers and sold as raw materials, products for recycling, transfer of technology or even as "development" projects. In these cases, hazardous wastes enter a country as "goods" or "products".

80. Since recycling is defined as "further use", it can be used as a pretext for exporting virtually all types of wastes, particularly to the poorer countries. The most commonly used pretexts are the use of hazardous wastes for energy production, as road-building or construction material or as fertilizer. 24/

81. The Special Rapporteur has received information describing a number of cases where movements of toxic and dangerous wastes have been accompanied by such false claims. She has also received information on persons killed, maimed or otherwise injured in developing countries through these operations. Such cases will be dealt with in her next reports after careful consideration and once additional information on these cases has been obtained.

2. Hazardous recycling operations

82. The Special Rapporteur has received information on a number of cases showing that even what can be considered "legitimate" forms of hazardous waste recycling, such as the reclamation of metals, can pose a serious threat to human health and the environment. 25/

83. Hazardous waste recycling or recycling of contaminated waste streams are said to constitute some of the dirtiest industrial operations known and are among the first wastes to find their way into developing countries or into Eastern Europe.

84. Experience in industrialized countries has shown that there is, in fact, no safe way to dispose of hazardous wastes. Hazardous waste recycling operations involve danger both to the workers exposed and to the environment of the importing country. Recycling operations are more labour-intensive and generally less regulated. In fact, wastes for recycling may represent a greater threat to occupational health and safety than those destined for outright dumping because they are usually handled more. Moreover, hazardous waste recycling processes release into the environment hazardous residues and emissions in the form of new wastes or pollution. According to UNEP, "recovery operations or facilities for hazardous and other wastes can release toxic emissions or discharges to air, soil or water and as such represent a potential threat to human health and the environment". 26/ In fact, the wastes thus produced are usually even more hazardous than the original wastes themselves: "residues arising from the recovery of hazardous wastes can be hazardous themselves, perhaps even more hazardous (toxic, poisonous, ecotoxic, etc.) than the original wastes due to higher concentrations of the hazardous constituents". 27/

85. The Special Rapporteur has received information describing some of the hazards involved in recovery operations or facilities for hazardous and other wastes. The following examples are illustrative without being exhaustive.

(a) Incineration plants

86. Incineration plants are often promoted and sold to poorer countries by waste traders as waste-to-energy plants that will produce free energy. In a 1989 report to the General Assembly (A/44/362 and Corr.1) the Secretary-General of the United Nations drew attention to the growth in the number of proposals from the industrialized countries to construct in the developing countries so-called waste-to-energy plants or provide supposedly non-hazardous waste landfill or incineration facilities.

87. The most common way to dispose of waste, whether hazardous or non-hazardous, is treatment or incineration. Often companies offer to build treatment or incineration plants free of charge, on condition that a certain amount of waste is treated in these plants. Incineration has, however, become one of the most controversial technologies. Over the last decade, incineration plants in the highly industrialized countries are increasingly subjected to stricter regulations, including moratoriums on their use and phase-outs. While incineration processes may reduce waste volumes by 70 to 90 per cent, it is not a final disposal method. It is said that even under ideal conditions, the process of incineration generates toxic emissions and residues, including bottom ash and fly ash, an airborne particulate, which are frequently more toxic than the original materials. "Waste-to-energy" plants are said routinely to discharge high levels of mercury and other heavy metals into the atmosphere. Research on the health and environmental effects of incinerator ash shows that it is invariably contaminated with a variety of inorganic and organic contaminants.

88. Incineration or reprocessing of toxic wastes creates new hazards. The ashes also have to be disposed of. If disposed of in landfill there is a high risk of groundwater contamination and the production of toxic leachate from the landfill, which can compromise drinking water supplies. Moreover, pollution control equipment, such as filters and scrubbers, fitted to the incinerator must be disposed of. While they may reduce emissions of toxic substances into the air, the disposal of contaminated filters and waste water from the scrubbers results in the contamination of other environmental media, such as soil and ground water.

(b) Lead recycling factories

89. The lead battery industry has been promoting trade in its wastes for recycling as an environmentally positive alternative to disposal. Battery recycling is, however, an inherently dangerous process, with potential for a great deal of damage to humans and the environment. Highly industrialized countries are increasingly introducing strict environmental standards requiring expensive pollution control equipment in secondary smelters, as well as high health and safety standards for workers. A combination of tighter regulations and a drop in domestic lead prices in the highly industrialized countries has resulted in the transfer, in recent years, of lead batteries and lead battery smelters out of these countries. Increasing quantities of waste lead batteries are being exported to developing countries for recycling.

90. Lead recycling factories expose workers to serious occupational and health risks. People living and children attending school near battery recycling facilities are also victimized by this toxic trade. The consumption of lead-contaminated crops, plants and fish from lead-contaminated streams poses a serious threat to human health. Battery recycling plants have also been found to discharge other toxic contaminants which pose health and environmental dangers. These include arsenic, mercury, antimony, polyvinyl chloride (PVC) and sulphuric acid.

91. The Special Rapporteur has received information describing a number of cases where movements of toxic and dangerous wastes have involved the transfer of such hazardous recycling processes. She has also received information on persons killed, maimed or otherwise injured in developing countries through these operations. Such cases will be dealt with in her next reports after careful consideration and once additional information has been obtained.

C. Export of waste-intensive industries

92. Information available to the Special Rapporteur also reveals another dimension of the toxic waste trade: the transfer of polluting industries, industrial activities and/or technologies which generate hazardous wastes, rather than the transfer of waste itself. There is evidence that there has been an expansion/migration of "dirty industry" from OECD to non-OECD countries. Hazardous technology processes transferred in this manner include those that have been regulated out of existence for environmental or health reasons, have become obsolete due to recognition of their hazards, face major opposition from local governments or community and labour organizations, have been replaced by safer technologies or are based on the manufacture, use or disposal of toxic persistent bioaccumulative compounds.

93. Hazardous technologies exported to developing countries are used in relation to asbestos-related industries, cyanide heap leaching and chlorine-related facilities in the chlor-alkali industry, marine disposal of mine tailings, manufacture of benzidine dyes and beta-Naphthylamine (an intermediate use in the manufacture of dyes) and tanneries. The export of incinerators is also a form of polluting industry transfer. Some of them are even presented as being "environmentally sound", and there is no source to which Governments and NGOs can turn for independent evaluation.

94. A disturbing trend in the chlor-alkali industry to shift chlorine-related facilities to the developing countries was reported in 1992. Approximately 70 per cent of the world's chlorine is produced in North America and Europe. Organochlorines are widely recognized as being highly toxic, causing a wide range of health effects in a broad array of species. Many organochlorines cause reproductive failure and infertility or birth defects. Some are known to disrupt the immune system. Many cause cancer. Virtually all damage the liver, kidneys, nervous system and other organs or systems. 28/

95. Developing countries are thus left with the problem of disposing of hazardous wastes generated by these industries. Pollution of the air, water and land caused by the processes used in these industries, as well as those caused by industrial disasters, pose great risks to the health, life and well-being of populations. Disasters such as occurred in Bhopal and Chernobyl, to mention only two, have claimed many victims and displaced populations. Such disasters can also contaminate land, watercourses, air and the atmosphere.

96. Over the past decade, the pesticide industry has been moving its plants to developing countries. While most investments come from transnational corporations, the transfer is often aided by national and international development agencies under the guise of agricultural development. In a number of reported cases, transnational corporations use these plants to produce pesticides that have been banned or severely restricted in industrialized countries.

97. The Special Rapporteur has received information describing a number of cases involving the transfer of hazardous waste-generating technology. She has also received information on persons killed, maimed or otherwise injured in developing countries through these operations. Such cases will be dealt with in her next reports after careful consideration and once additional information on these cases has been obtained.

D. Movement of toxic and dangerous products

98. According to the information made available to the Special Rapporteur, a number of products that are banned, withdrawn, severely restricted or not approved in industrialized countries continue to be produced in those countries and freely exported to developing countries. Among these are certain pesticides and pharmaceuticals, asbestos and plastics containing polyvinyl chloride (PVC).

99. The most widely recognized and best known case of trade in toxic and dangerous products is that involving pesticides. WHO estimates that pesticides poison at least 3 million people annually and kill some 20,000. 29/ The Special Rapporteur has received information about trade in pesticides such as chlordane and heptachlor (two carcinogenic chlorinated products), and parathion ethyl and organophosphorus (OP) pesticides including parathion methyl, malathion and fenitrothion.

100. OP pesticides were substituted for dangerous organochlorine insecticides like DDT, but have not proven to be a safe alternative. According to a WHO/UNEP working group, they have caused more human deaths than any other pesticide. 30/ According to the same source, OP pesticides have significantly raised the risks of ill health in developing countries. It estimates that by the year 2000, the use of OP pesticides in developing countries will double and underlines that "if the public health problems associated with the use of pesticides are correlated with the amounts used, these figures may indicate the extent of future problems". 31/

101. The Special Rapporteur also received information about such trade in pharmaceutical products. Most manufacturers of dangerous and non-effective drugs export their products without major obstacles. In the second half of 1990, 47 drugs which had been banned or withdrawn in the EC were still on the market in developing countries. These include painkillers such as flafenine, alclofenac, oxyphenbutazone and dipyrone which were taken off the market because of their negative risk/benefit ratio. Safe alternatives are said to exist.

102. The Special Rapporteur has received information on a number of cases involving the movement of toxic and dangerous products. She has also received information on persons killed, maimed or otherwise injured in developing countries as a result. Such cases will be dealt with in her next report after careful consideration and once additional information has been obtained.

IV. FACTORS CONTRIBUTING TO THE ILLICIT TRAFFIC IN, TRANSFER AND DUMPING OF TOXIC AND DANGEROUS PRODUCTS AND WASTES IN AFRICAN AND OTHER DEVELOPING COUNTRIES

103. In resolution 1995/81, the Commission requested the Special Rapporteur to make recommendations and proposals on adequate measures to control, reduce and eradicate the illicit traffic in, transfer to and dumping of toxic and dangerous products and wastes in African and other developing countries. In order to do so, it would be necessary to examine the factors, or combination of factors, that generated the practice and encouraged its expansion.

104. A combination of factors of a legal, economic, social and political character are identified as having contributed to the emergence and expansion of movements in toxic and dangerous products and wastes. The Special Rapporteur considers it necessary to examine these factors more carefully and proposes to do so in her next reports, taking into account additional information gathered in the fulfilment of her mandate. This will also permit her to begin to formulate recommendations and proposals on adequate measures to control, reduce and eradicate the practice.

105. A United Nations report submitted to the workshop on environmental protection at the national and international levels: potentials and limits of criminal justice pointed out that:

> "Despite national criminal laws and international conventions, trade in hazardous wastes is still a serious problem. Because of the high cost of legal disposal of hazardous wastes in developed countries, there is great temptation for producers to lure poor, cash-strapped countries to import such wastes by providing attractive financial inducements and even by bribing officials. Transport documentation, laboratory analyses and consent documents are often doctored by shippers and transporters, thus escaping scrutiny by custom and border officials.
>
> "Some of the above-mentioned practices occur because of the imprecise language used in the conventions such as the definition of waste (whether waste destined for recycling is waste), the definition of parties (whether brokers or international facilitators are covered by the Basel Convention and whether the consent of transit countries is necessary).
>
> "More serious weaknesses in combating this type of criminality, however, are the difficulties in detecting, investigating and tracking vessels sailing the oceans and vehicles criss-crossing international borders. In this respect, developing countries lack the infrastructure and laboratory and testing facilities for determining whether the goods they receive from developing countries are prohibited wastes." (A/CONF.169/12, paras. 69-71).

106. A report of the United States Department of Justice observed that:

> "One study of hazardous waste crime in the north-east found that bribery and offers of employment at hazardous waste facilities were prevalent methods of manipulating public officials to meet offenders' ends. In addition, Treatment, Storage and Disposal Facility (TSDF) operators often hire attorneys with prior regulatory agency work experience. These lawyers bring to their positions a detailed knowledge of environmental laws and regulations. Although in no way is it improper to hire such professionals, in those instances in which the lawyer is buying a polluter time to comply, the real victims are the public and the environment. Moreover, hazardous waste generators and other environmental wrongdoers are increasingly using intermediaries and dummy corporations to shield their involvement in illegal disposal operations. Prosecution of environmental criminals thus often involves 'piercing the corporate evil' in addition to proving corporate liability through respondeat superior or vicarious liability theories. This challenge, together with the defense bar's effective use of dilatory trial practices, poses obstacles to successful environmental prosecution." 32/

107. Following is a brief summary of the factors contributing to the movement of toxic and dangerous products and wastes to African and other developing countries which have been identified in the light of the information made available to the Special Rapporteur.

108. Disparities in domestic legal standards between developed countries, on the one hand, and developing countries, on the other: stricter environmental standards and extensive waste disposal legislation within many industrialized countries, and arrangements among EEC and OECD member States to regulate transfrontier movements of hazardous wastes within the specific region or group have made it more difficult and more costly to treat and dispose of wastes in their country of origin, and have provided an incentive for companies to seek outlets in poorer, less industrialized countries where similar legislation is absent or which suffer from a lack of human and financial resources to implement them.

109. The existence of an environmental "double standard" is another factor contributing to the movement of toxic and dangerous products and wastes to developing countries. While waste-exporting countries generally possess stringent regulations on the sale of toxic and dangerous products and wastes on the domestic market as well as stringent waste management regulations, similar restrictions with regard to their export are either weak or absent.

110. There is an absence of effective regulatory mechanisms at the international level. Even existing international instruments contain several ambiguities and loopholes which allow questionable toxic waste trade arrangements to continue legally, as well as elements which weaken their ability to define, control and penalize illegal or unsatisfactory practices.

111. A further factor contributing to the movement of hazardous wastes and toxic and dangerous products to developing countries is their continued generation in industrialized countries. Existing regulations do not address the generation of toxic and dangerous wastes in production processes and technologies, nor are they aimed at halting the production of toxic and dangerous products. National regulations emphasize pollution control or end-of-pipe technologies that merely serve to collect or concentrate the waste which, then, must be disposed of somewhere. International regulations permit companies to transfer risks to human health and the environment from the exporting country to the importing country. According to one author, "Instead of reducing the risks of the generation of hazardous wastes, current regulations seem only to redistribute them geographically". 33/

112. The liberalization and deregulation of international markets, including financial markets, have increased the locational flexibility of transnational corporations and facilitated the movement of toxic and dangerous products and wastes across frontiers. Structural adjustment programmes, imposed on debtor developing countries by the international financial institutions and requiring the liberalization and deregulation of their economies have created the conditions for easy entry into these countries of transnational corporations and other enterprises engaged in such activities. 34/

113. The history of the international trade in toxic and dangerous wastes shows that they inevitably move toward areas with the least political and economic power to refuse them. Corporations trading in toxic and dangerous products and wastes find lucrative waste markets in poorer, less industrialized countries, in particular in Africa. Such markets are often found in economically depressed areas with serious problems such as poverty, unemployment, foreign indebtedness, conversion of production and the search

for alternatives to declining industries provoked by falling demand on the world market. Poorer, heavily indebted countries are particularly vulnerable to external pressures which can take the forms of promises of easily acquired foreign exchange in hard currency, employment creation, installation of enterprises for waste recycling and the transfer of new technologies.

114. Transnational corporations engaged in the production of and trade in toxic and dangerous products and wastes are attracted to countries where wages are low and labour standards and trade union rights weak. They usually dump their wastes in areas inhabited by populations that are economically and/or politically weak and recruit most of their workforce from among the poorest sectors.

115. Waste tends to move toward areas with weak or non-existent environmental legislation and enforcement. It is extremely difficult or even impossible for African and other developing countries to determine the nature of substances crossing their borders. Often, they do not possess adequately equipped laboratories for testing, evaluation and environmental monitoring. They lack analytical expertise within existing laboratories to handle the demand for chemical management work. Furthermore, they lack specialist information on the harmful characteristics of wastes and data systems, making it difficult to control wastes entering the country. According to information available to the Special Rapporteur, in a number of instances, offers made to developing countries by waste traders either did not divulge vital information on the nature of the wastes or the information was distorted; waste brokers mixed a toxic waste with others, or redefined the waste as resource "goods". Such handling and intermediate treatment also produce new waste streams.

V. RELATIONSHIP BETWEEN THE ILLICIT DUMPING OF TOXIC AND DANGEROUS PRODUCTS AND WASTES IN AFRICAN AND OTHER DEVELOPING COUNTRIES AND THE ENJOYMENT OF HUMAN RIGHTS

A. General considerations

116. In its resolution 1995/81, the Commission requested the Special Rapporteur to investigate and examine the effects of the illicit dumping of toxic and dangerous products and wastes in African and other developing countries on the enjoyment of human rights, in particular on the rights to life and health of everyone.

117. The Commission resolution places particular emphasis on the two main international instruments on hazardous wastes: the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal and the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and All Forms of Hazardous Wastes within Africa.

118. The Commission also took note of the Code of Practice on the Transboundary Movement of Radioactive Waste, and of the decision of the General Conference of IAEA to keep the question of the international transboundary movements of radioactive waste under active review, including the desirability of concluding a legally binding instrument under the auspices of the Agency.

119. Legal rules governing the handling of toxic substances cut across a broad spectrum of jurisdictions and subjects. In addition to international human rights principles, applicable international law includes international agreements that regulate dangerous substances, including their handling, health and safety at work, environmental protection, access to information about environmental hazards and environmental impact assessments, as well as customary law. In the domestic sphere, applicable law includes national and local legal provisions, both statutory and, where applicable, common law. (See chap. II)

120. The Commission's mandate directs the Special Rapporteur to focus on the human rights impact of "illicit" activities involving toxic and dangerous products and wastes. The term "illicit" encompasses any activity prohibited by law. Applicable law in the present context includes laws that regulate such products and wastes directly, as well as laws that regulate other subjects affecting or affected by such products, including human rights norms and standards.

121. The Special Rapporteur will examine and investigate the adverse effects on the enjoyment of human rights of all aspects of the traffic in and dumping of toxic and dangerous products and wastes. The Special Rapporteur considers the prevention of violations of human rights of fundamental importance and will investigate all movements of toxic and dangerous products and wastes that have a harmful or a potentially harmful impact on the enjoyment of human rights.

122. The Special Rapporteur will endeavour not to overlook the perspective of the victims. In his study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms, the Special Rapporteur of the Sub-Commission, Mr. Theo van Boven, pointed out: "In spite of the existence of relevant international standards [...] the perspective of the victim is often overlooked. It appears that many authorities consider this perspective a complication, an inconvenience and a marginal phenomenon. Therefore, it cannot be stressed enough that more systematic attention has to be given, at national and international levels, to the implementation of the right to reparation for victims of gross violations of human rights" (E/CN.4/Sub.2/1993/8, para. 133). In this regard, the Special Rapporteur will bear in mind relevant recommendations and conclusions contained in the above report as well as provisions of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34 of 29 November 1985) emanating from deliberations at the Seventh United Congress on the Prevention of Crime and the Treatment of Offenders.

123. It is worth noting the definition of "victims" under that Declaration. According to paragraphs 1 and 2, "victims" are "persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights ... A person may be considered a victim ... regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familiar relationship between the perpetrator and the victim. The term 'victim' also includes, where appropriate, the immediate

family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization".

124. It is also important to stress that the Declaration contains a specific provision relating to the environment. Paragraph 10 provides that "in cases of substantial harm to the environment, restitution, if ordered, should include, as far as possible, restoration of the environment, reconstruction of the infrastructure, replacement of community facilities and reimbursement of the expenses of relocation, whenever such harm results in the dislocation of a community".

B. Human rights and interrelated issues

1. A Global Approach

125. The adverse effects of the practice under consideration on specific human rights has to be examined within a broader framework that takes into account universally recognized human rights principles, in particular equality and non-discrimination, and other norms and standards, including the interrelationship between development, environment, and human rights; the notion of indivisibility and interdependence of all human rights; the relationship between individual and collective rights; the relationship between the national environment and the international environment; the responsibility of States and international cooperation and solidarity. The approach adopted by the Special Rapporteur will be global and multidimensional in character.

126. Besides the specific international instruments on human rights, several other instruments are also relevant for the conduct of the mandate of the Special Rapporteur. These are, inter alia:

(a) Charter of the United Nations, Articles 55 and 56;

(b) Declaration on the Granting of Independence to Colonial Countries and Peoples, General Assembly resolution 1514 (XV) of 14 December 1960;

(c) General Assembly resolution 1803 (XVII) of 14 December 1962, "Permanent sovereignty over natural resources";

(d) Declaration on Social Progress and Development, General Assembly resolution 2542 (XXIV) of 11 December 1969;

(e) Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, General Assembly resolution 2625 (XXV) of 24 October 1970;

(f) Charter of Economic Rights and Duties of States, General Assembly resolution 3281 (XXIX) of 12 December 1974;

(g) Declaration and Programme of Action on the Establishment of a New International Economic Order, General Assembly resolutions 3201 (S-VI) and 3202 (S-VI), respectively, of 1 May 1974;

(h) World Declaration and Plan of Action for Nutrition adopted by the International Conference on Nutrition (FAO) (Rome, 1992);

(i) Copenhagen Declaration on Social Development and Programme of Action of the World Summit for Social Development (Copenhagen, 6-12 March 1995), in particular commitment 4 of the Declaration which states: "We commit ourselves to promoting social integration by fostering societies that are stable, safe and just and that are based on the promotion and protection of all human rights, as well as on non-discrimination, tolerance, respect for diversity, equality of opportunity, solidarity, security, and participation of all people, including disadvantaged and vulnerable groups and persons" (A/CONF.166/9, chap. I, resolution 1, annex I).

2. Transnational corporations

127. In its resolution 1995/81, the Commission, expressing awareness "of the growing practice of the dumping in African and other developing countries by transnational corporations and other enterprises from industrialized countries of hazardous and other wastes that constitute a serious threat to the human rights to life and health of everyone, and which they cannot dispose of within their territories of operation", requested the Special Rapporteur to submit her findings, including the list of transnational corporations engaged in such a practice. While such a list will be established at a later stage, the Special Rapporteur wishes to present some preliminary remarks on the subject.

128. As noted in a previous chapter, trade liberalization and the deregulation of international financial markets have helped create the conditions in which trade in toxic and dangerous products and wastes could develop. The liberalization and deregulation of the economies of developing countries, a central element of structural adjustment programmes imposed on debtor developing countries by international financial institutions, has greatly facilitated the export of toxic and dangerous products and wastes to these countries. Furthermore, trade liberalization and the deregulation of international financial markets have facilitated access to easy credit and removed licensing requirements and other restrictions on waste traders.

129. Consequently, the Special Rapporteur intends to pay special attention to this issue and will take advantage of the preliminary set of basic policy guidelines contained in the report of the Secretary-General prepared in pursuance of resolution 1994/37 (E/CN.4/Sub.2/1995/10). The report recalls that the Charter of Economic Rights and Duties of States, in article 2 (2) (a) and (b), provides that: "Each State has the right to regulate and exercise authority over foreign investment within its national jurisdiction in accordance with its laws and regulations and in conformity with its national objectives and priorities. No State shall be compelled to grant preferential treatment to foreign investments" and that "Every State has the right to regulate and supervise the activities of transnational corporations within its national jurisdiction and take measures to ensure that such activities comply with its laws, rules and regulations and conform with its economic and social policies. Transnational corporations shall not intervene in the internal affairs of a host State. Every State should, with full regard for its sovereign rights, cooperate with other States in the exercise of the right set forth in this subparagraph".

130. The above report lists the following guidelines concerning transnational corporation:

(a) "Developed countries should cooperate in ensuring that the activities of transnational corporations are in keeping with the economic and social objectives of the developing countries in which they operate" (para. 204);

(b) "States should eliminate all forms of foreign economic exploitation, particularly that practised by international monopolies, in order to enable the people of every country to enjoy in full the benefits of their national resources" (para. 205);

(c) "Measures should be adopted for the regulation and supervision of the activities of transnational corporations, by taking measures in the interest of the national economies of the countries where such transnational corporations operate on the basis of the full sovereignty of those countries" (para. 206);

(d) "All efforts should be made to formulate, adopt and implement an international code of conduct for transnational corporations: (a) to prevent interference in the internal affairs of the countries where they operate; (b) to regulate their activities in host countries, to eliminate restrictive business practices and to conform to the national development plans and objectives of counties, and in this context facilitate, as necessary, the review and revision of previously concluded arrangements; (c) to bring about assistance, transfer of technology and management skills to developing countries on equitable and favourable terms; (d) to regulate repatriation of the profits accruing from their operations, taking into account the legitimate interest of all parties concerned; (e) to promote reinvestment of their profits in developing countries" (para. 208).

131. In a report on the relationship between the enjoyment of human rights and the working methods and activities of transnational corporations (E/CN.4/Sub.2/1995/11) the Secretary-General states:

> "In their search for markets, TNCs export dangerous chemical products mainly from those countries where chemicals considered to be dangerous are banned. Despite an FAO code requiring that no pesticides in certain categories be exported, products subject to health and safety regulations in home countries continue to be sold in countries lacking such regulations or information on safe usage. Water pollution and food contamination resulting from the intensive use of agrochemicals such as pesticides, herbicides, fungicides and insecticides also represent a growing environmental and public health concern ...
>
> "Other toxic chemicals TNCs use in their production process also cause health problems, for instance TNCs manufacture most of the world's chlorine which is used as a base for potentially harmful chemicals such as PCBs, DDT and dioxins; these chemicals can lead to birth defects as well as reproductive, developmental and neurological damage. TNC

involvement in the production and use of asbestos, volatile organic compounds and radioactive waste materials can also generate health problems" (paras. 33-34).

3. Impact on human rights

132. The human rights impact of the dumping of toxic and dangerous products and wastes has been a subject of concern in United Nations human rights bodies. The final report of the Special Rapporteur on human rights and the environment underlined that the transfer of toxic and dangerous products and wastes across frontiers and their dumping lead to violations of human rights (E/CN.4/Sub.2/1994/9, para. 125). It also underlined the various aspects of the relationship between human rights and the environment, analysed the legal foundations of the right to a satisfactory environment as well as the effects of environmental degradation on the enjoyment of fundamental rights such as the right of peoples to self-determination, permanent sovereignty over national resources, the right to life, the right to health, the right to food, the right to safe and healthy working conditions, the right to housing, the right to information, the right to participation, freedom of association and cultural rights. It also focused on the issue of poverty and underdevelopment in relation to the environment and on the impact of environmental degradation on vulnerable groups such as indigenous peoples, peoples under domination or foreign occupation, women, children, disabled persons, refugees and migrant workers.

133. The Special Rapporteur believes that the issue of illicit traffic in and transfer of toxic wastes and dangerous products, while involving specific problems, cannot be separated from the overall issue relating to human rights and the environment. Therefore, the analyses and the conclusions and recommendations contained in the above-mentioned report could serve as a general reference for the conduct of the present mandate.

134. On the issue of toxic wastes, one should recall that in the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights, the international community recognized "that illicit dumping of toxic and dangerous substances and waste potentially constitutes a serious threat to the human rights to life and health of everyone". Consequently, it called on all States to adopt and vigorously implement existing conventions relating to the dumping of toxic and dangerous products and wastes and to cooperate in the prevention of illicit dumping (part I, para. 11).

135. Commission resolution 1995/81 makes special reference to the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenants on Human Rights and the Vienna Declaration and Programme of Action.

136. The mandate of the Special Rapporteur implies that, in addition to their adverse effects on the right to life and the right to health, toxic and dangerous products and wastes may also have adverse effects on other human rights. The information made available to the Special Rapporteur on the effects of the traffic in and dumping of dangerous and toxic products and wastes permits the identification of several other human rights contained in international human rights instruments that may be adversely affected as a

result of such practices. These rights include the right of peoples to self-determination and to permanent sovereignty over their natural wealth and resources (common art. 1 of both International Covenants; art. 1 of the Declaration on the Right to Development) and the right to development as contained in the Declaration on the Right to Development.

137. The practices referred to above also often involve a violation of the right to information provided for in article 19 (2) of the International Covenant on Civil and Political Rights and in some cases article 7, providing that no one shall be subjected without his free consent to medical or scientific experimentation, may also be threatened.

138. Other rights recognized in the International Covenant on Economic, Social and Cultural Rights which may be adversely affected are the right to technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment (art. 6); the right of everyone to the enjoyment of just and favourable conditions of work, including a decent living for themselves and their families and safe and healthy working conditions (art. 7); the right of everyone to an adequate standard of living, including adequate food and housing, and to the continuous improvement of living conditions (art. 11); the right of everyone to the enjoyment of the highest attainable standard of physical and mental health which requires States parties to take the steps necessary for the healthy development of the child, for the improvement of all aspects of environmental and industrial hygiene, as well as for the prevention, treatment and control of occupational and other diseases (art. 12); the right of everyone to enjoy the benefits of scientific progress and its application (art. 15).

139. The Secretary-General's report on the relationship between the enjoyment of human rights and the working methods and activities of transnational corporations notes, for instance, that "the activities and methods of work of TNCs have implications for the effective enjoyment of a number of human rights. These include the right of peoples to self-determination and to permanent sovereignty over their natural wealth and resources; the right to development; the right of everyone to a standard of living adequate for the health and well-being of himself and his family and to the continuous improvement of living conditions; the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the right to full and productive employment; the right to form and join trade unions, the right to strike and the right to bargain collectively; the right of everyone to social security; the right of everyone to enjoy the benefits of scientific progress and its applications; and the right of everyone to a social and international order. The practices also affect the rights of certain groups and peoples, including women, children, migrant workers and indigenous peoples" (para. 89).

140. The Special Rapporteur does not intend to prepare an exhaustive list of the human rights that are or may be adversely effected by the traffic and dumping of toxic and dangerous products and wastes. She proposes to elaborate on these further in the course of investigating and examining the information made available to her in the context of her mandate. The adverse effects that the practice under consideration may have on specific human rights will be

examined within the broader framework outlined above and on the basis of the main instruments on human rights such as the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women, the Declaration on the Right to Development, General Assembly resolution 41/128, of 4 December 1986, the Convention on the Rights of the Child, the International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families.

VI. PRELIMINARY CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

141. Despite grave threats to human health and the environment posed by the generation of toxic and dangerous products and wastes, the volume of wastes produced by industrialized countries continues to rise.

142. In the 1970s, as a result of growing public opposition to dangerous waste disposal practices, extensive waste disposal legislation was, first of all, introduced within many industrialized countries to regulate the treatment of wastes. Stricter environmental standards in countries where hazardous wastes were generated raised the costs of treating and disposing of them in the country of origin. According to information available to the Special Rapporteur, at present a vast majority of the world's toxic pollution is produced in OECD countries which generate more than 95 per cent of all hazardous waste, the largest waste-exporting countries being Germany, the Netherlands, the United States of America, the United Kingdom and Australia.

143. In some of these countries public opposition has brought about a virtual moratorium on the treatment and disposal of waste. These difficulties have increased incentives for companies to find outlets in poor, less industrialized countries. The differences in domestic legal standards and the relative costs of disposing of toxic wastes have provoked multiple movements of wastes across frontiers.

144. The history of international trade in toxic and dangerous wastes shows that they inevitably move towards those areas with the least political and economic power to refuse them. In the 1980s, Africa was the first victim of toxic waste export schemes. However, due to public attention being drawn to such trade in Africa, the mobilization of African countries against the trade and the establishment of import bans through the Bamako and Lomé international conventions, as well as the establishment by African countries of the Dumpwatch Monitoring System, traders in toxics have sought to expand their trade in other regions. Since 1989, there have been reports of numerous export schemes involving the movement of wastes from industrialized countries to Latin America and East and South-East Asia. Several Latin American Governments have now prohibited the import of wastes. The Central American Agreement on Transboundary Movements of Hazardous Wastes also bans imports of all hazardous wastes. Both African and Central American regional agreements include banning imports of radioactive wastes as well as hazardous products such as asbestos or unregistered pesticides. In recent years, a large number

of countries have introduced import bans: whereas in 1986 only three countries had banned such imports, the number increased to 33 in 1988, 88 in 1992 and 107 in 1995.

145. At their third meeting in 1995, the States parties to the Basel Convention introduced an amendment to the Convention banning exports of hazardous wastes, including those destined for recycling, from OECD to non-OECD countries. The ban will enter into force at the end of 1997.

146. Despite general awareness that the transboundary movement of hazardous wastes has become a global problem demanding global solutions and despite efforts of developing countries to halt international movements of wastes, there has been an increase in their export from industrialized countries towards the Third World, mainly owing to the proliferation of waste "recycling" programmes which allow waste traders to adapt to changing conditions.

147. Another dimension of the problem is the transfer of polluting industries, industrial activities and technologies which generate hazardous wastes. According to information available to the Special Rapporteur, there is evidence to show that there has been an expansion or migration of "dirty industry" from OECD to non-OECD countries.

148. Another matter of concern is the fact drawn to the attention of the Special Rapporteur that a number of products that are banned, withdrawn, severely restricted or not approved in industrialized countries continue to be produced and freely exported to developing countries.

149. A combination of factors of a legal, economic, social and political character are contributing to the emergence and expansion of movements of hazardous wastes and products from industrialized to developing countries. Among these are disparities in domestic legal standards between developed and developing countries, the existence of an environmental "double standard" within exporting countries, the absence of effective international regulatory mechanisms as well as ambiguities contained in international instruments, and difficulties faced by developing countries in enforcing their domestic law and international legislation. Developing countries lack the relevant information, infrastructure and laboratory and testing facilities to determine the nature and characteristics of the wastes and other products they receive; they also face fraudulent and other inadmissible practices such as official corruption in the exporting, importing and transit countries.

150. Trade liberalization and deregulation of international financial markets have also helped to create the conditions in which trade in toxic and dangerous products and wastes could develop. The liberalization and deregulation of the economies of developing countries, a central element of structural adjustment programmes imposed on debtor developing countries by international financial institutions, has greatly facilitated the export of toxic and dangerous products and wastes to those countries. Furthermore, trade liberalization and the deregulation of international financial markets have facilitated access to easy credit and removed licensing requirements and other restrictions on waste traders. African countries and other developing countries continue to be the principal victims of such practices while,

according to the most recent information available, new target countries for waste exports are the Baltic States, Russia, Ukraine, Georgia, Slovenia, Romania, Poland and Albania.

B. Recommendations

151. The Special Rapporteur has intended in this first report to provide a general overview of the issues relating to the illicit movement and dumping of toxic and dangerous products and wastes. Subsequent reports will deal more specifically with situations, incidents and cases involving the human rights of the victims. They will contain detailed recommendations and proposals on measures to control, reduce and eradicate the phenomena and their adverse consequences on the enjoyment of human rights.

152. As a preliminary recommendation, the Special Rapporteur reiterates the call, contained in the Vienna Declaration and Programme of Action, on all States to adopt and vigorously implement existing conventions relating to the dumping of toxic and dangerous products and wastes and to cooperate in the prevention of illicit dumping.

153. The Special Rapporteur wishes to draw the attention of the international community to the following objectives adopted within the framework of Agenda 21 to prevent the illegal transboundary movement of hazardous wastes:

(a) To reinforce national capacities to detect and halt any illegal attempt to introduce toxic and dangerous products into the territory of any State, in contravention of national legislation and relevant international legal instruments;

(b) To assist all countries, particularly developing countries, in obtaining all appropriate information concerning illegal traffic in toxic and dangerous products;

(c) To cooperate in assisting countries that suffer the consequences of the illegal traffic.

154. On matters relating to her mandate, the Special Rapporteur recommends:

(a) The implementation of the Commission's request to establish in the Centre for Human Rights a focal unit with the specific task of following up on the findings of the Special Rapporteur and other related issues (resolution 1995/81, para. 9);

(b) For practical reasons, and bearing in mind the mandate given by the Commission in resolution 1995/81, to choose an appropriate short title such as "Special Rapporteur on human rights and hazardous wastes and products".

Notes

1/ This amount is an approximation given by C. Hitz and M. Radka, in "Environmental negotiation and policy; the Basel Convention on transboundary movement of hazardous wastes and their disposal", International Journal of Environment and Pollution, vol. 1, No. 1/2, 1991, p. 55.

2/ Ibid., p. 56.

3/ Ibid.

4/ A. E. Fry, "International transport of hazardous waste", Environmental Science and Technology, 1989, p. 509.

5/ H. Yakowitiz, "Global hazardous transfers", Environmental Science and Technology, 1989, p. 540.

6/ Ibid.

7/ S. Rublack, "Fighting transboundary waste streams: Will the Basel Convention help?", Verfassung und Recht in Ubersee 1989, p. 367.

8/ C. Hitz and J.R. Ehrnefeld, "Transboundary movement of hazardous wastes. A comparative analysis of policy options to control the international waste trade", Environmental Affairs, Vol. 3, Winter 1991, p. 29.

9/ Pambou-Tchivounda: "L'interdiction de déverser des déchets toxiques dans le tiers-monde; le cas de l'Afrique", Annuaire français de droit international, 1988, p. 709.

10/ See Principle 21 of the Stockholm Declaration; General Assembly resolution 36/166 of 16 December 1981; and the Cairo Guidelines and Principles for the Environmentally Sound Management of Hazardous Wastes (UNEP/GC. 14/17, annex II).

11/ Decision I/15 adopted by the First Meeting of the Conference of the Parties to the Basel Convention confirmed this obligation by urging the Parties to "promulgate laws that consider illegal traffic in hazardous wastes a criminal act".

12/ Published in, inter-alia, "Environment as a value and its protection through criminal law". ISPAC/Instituto Per L'Ambiente. Beniamino Caravita (ed.), 1995, annex, pp. 65-72.

13/ See report of the second meeting (UNEP (OCA)/MED/WG.79.4), Annex I.

14/ European Treaty Series, No. 150.

15/ "Le Protection de l'environnement" Annuaire français de droit international, 1991, p.1093.

16/ See Report of the United Nations Conference on the Human Environment, Stockholm, 5-16 June 1972 (United Nations publication, Sales No.E.73.II.A.14).

17/ See final report prepared by Mrs. Fatma Zohra Ksentini, Special Rapporteur (E/CN.4/Sub.2/1994/9, para. 29).

18/ Editors of the Harvard Law Review, Trends in International Environmental Law, 19-21 (1992).

19/ Trial Smelter Case, (United States v. Canada).

20/ See United Nations, Reports of International Arbitral Awards, vol. III, pp. 1905-1982. The Corfu Channel case, (United Kingdom v. Albania) 1949 I.C.J. 4. ("every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States").

21/ Greenpeace, Toxic Trade Update, No.6.4, 1993, p. 26.

22/ Greenpeace, The International Trade in Wastes, Washington DC, several editions, 1988-1989.

23/ UNEP, "Guidance Document on Transboundary Movements of Hazardous Wastes destined for Recovery Operations" (UNEP/CHW.3/17), April 1995, para. 40.

24/ Ibid., para. 64, p. 18.

25/ See A. Bernstorff and I. Kruszewska, "Hazardous waste trade in Poland 1988-1994", Greenpeace International, 11 October 1994; A. Bernstorff et al., "Russia: the making of a waste colony", Greenpeace, 25 November 1993; M. Cobbing, Lead, Astray: The Poisonous Lead Battery Waste Trade, Greenpeace, Recycling Series Case Study No. 5, second edition, 21 March 1994; F. Kockott, Wasted Lives: Mercury Waste Recycling at Thor Chemicals: Greenpeace, Recycling Series Case Study No. 4, 21 March 1994.

26/ UNEP, op. cit., para. 65.

27/ Ibid., para. 66.

28/ Greenpeace, Toxic Trade Update, No. 6.3, 1993, p. 27.

29/ WHO/UNEP Working Group on the public health impact of pesticides used in agriculture, 1990.

30/ Ibid.

31/ Ibid.

32/ "Local prosecution of environmental crime", National Institute of Justice, United States Department of Justice, June 1993, p. 5.

33/ J.C. Bongaerts, "Transfrontier movements of hazardous wastes", Wissenschaftszentrum, Berlin, 1988.

34/ See, inter alia, the background document prepared by the Secretary-General on the relationship between the enjoyment of human rights, in particular international labour and trade union rights, and the working method and activities of transnational corporations (E/CN.4/Sub.2/1995/11).